

Legal Dept. Use Only:
Log-in Date: 10/7/03
1 Original(s) or Copy to Department
or Fiscal Services on 10/13/03

Arts Council funding agreement for FY2004 includes \$300,000 for operations, \$150,000 for representational public art, \$42,767 for the George Bush Library, and \$50,000 for the Veterans Memorial. The approved budget ordinance provides City Managers authorization to sign contract.

DATE _____

FUNDING AGREEMENT

This Agreement is made by and between the **CITY OF COLLEGE STATION**, a Texas Home Rule Municipal Corporation (hereinafter referred to as "**CITY**"), and the **ARTS COUNCIL OF BRAZOS VALLEY** (hereinafter referred to as "**ARTS COUNCIL**").

I.

The **CITY OF COLLEGE STATION**, located in Brazos County, Texas, by authority granted to it under state statutes and its home-rule charter, has heretofore enacted a hotel-motel occupancy tax on the occupants of hotels/motels within the city limits.

II.

The **ARTS COUNCIL** is responsible for the promotion of tourism and the convention and hotel industry through attracting, promoting, developing, presenting, producing and encouraging the arts in College Station, Texas.

III.

CITY hereby grants a total of **FIVE HUNDRED FORTY-TWO THOUSAND SEVEN HUNDRED SIXTY-SEVEN AND NO/100 DOLLARS (\$542,767.00)** to the **ARTS COUNCIL**. The funds shall be distributed as follows:

(A) Pursuant to its discretionary powers authorized under V.A.T.S., Tax Code, §351.002(a), **CITY** has enacted a hotel/motel occupancy tax and designated a portion of the funds collected for the encouragement, promotion, improvement and application of the arts from the funds actually collected and received by **CITY** from the hotel/motel occupancy tax **CITY** will provide a total of **THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00)**, to the **ARTS COUNCIL** for the **ARTS COUNCIL's** promotion of tourism and the convention and hotel industry through attracting, promoting, developing, presenting, producing and encouraging the arts in College Station, Texas.

(B) **CITY** will provide a total of **ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00)** to the **ARTS COUNCIL** from the General Fund of **CITY** for the Art in Public Places Representational Art Program to be administered by **ARTS COUNCIL**. The **ARTS COUNCIL** agrees to inform **CITY** through the City Manager of all selected works prior to entering into artists contracts.

(C) CITY will provide a total of **FORTY-TWO THOUSAND SEVEN HUNDRED AND SIXTY-SEVEN AND NO/100 DOLLARS (\$42,767.00)** to the **ARTS COUNCIL** from the General Fund of CITY, such funds to be designated for the George Bush Library and Museum for art and culture activities. The **ARTS COUNCIL** agrees to inform CITY through the City Manager of the art and culture activities undertaken with these funds.

(D) CITY will provide a total of **FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00)** to the **ARTS COUNCIL** from the General Fund of CITY, such funds to be designated for the Brazos Valley Veterans Memorial. Funds shall be used for the planning and design of the second phase of the Veterans Memorial. The Brazos Valley Veterans Memorial shall acquire matching \$50,000.00 from other sources to go towards the construction of the second phase of the Veterans Memorial.

The **ARTS COUNCIL** agrees to conduct a continuing program of development, introduction, presentation, encouragement, and promotion of the arts in CITY by using all appropriate means to increase the availability, performance, execution and exhibition of all major art forms as defined by V.A.T.S., Tax Code, §351.101(a)(4)(as amended). The **ARTS COUNCIL** is an independent contractor and shall be responsible for the final product contemplated under this Agreement. The **ARTS COUNCIL** shall have ultimate control over the implementation of this Agreement. The **ARTS COUNCIL** shall give personal attention to the faithful prosecution and completion of this Agreement. It is understood and agreed to by the parties that the services contemplated by this Agreement shall be provided through a salaried staff and qualified volunteers. Adequate supervision is essential to the proper performance of the work.

The **ARTS COUNCIL** further agrees that, in all of its activities funded pursuant to this agreement, it will seek to achieve the purposes of the statute through pursuit of artistic benefits for CITY.

IV.

The **ARTS COUNCIL** shall provide to CITY a proposed annual budget for the following year, which budget shall be submitted to CITY for review not later than May 31st of each year. Also, on an annual basis, **ARTS COUNCIL** shall submit proposed service levels and

performance measures to **CITY** at the same time it submits a proposed budget to **CITY**. It is understood and agreed by and between the parties that, upon budget approval by the municipality, the statute creates a fiduciary duty in the **ARTS COUNCIL** with respect to the expenditure of revenue provided.

The **ARTS COUNCIL** shall provide to the College Station City Council an annual report of the activities that it has conducted to benefit **CITY**, as well as annual financial statements listing the expenditures made from the hotel/motel occupancy tax revenue funds received from **CITY**. It is further agreed by the **ARTS COUNCIL** that it shall maintain said funds in a separate account established for that purpose, and that it shall not commingle those funds with any other monies or maintain those funds in any other account.

The **ARTS COUNCIL** shall maintain a complete and accurate set of financial records of each expenditure of the funds and upon request of **CITY** shall make the records available for inspection and review during normal business hours.

On a quarterly basis, **ARTS COUNCIL** shall submit to **CITY** an Activity Report of its activities and accomplishments for that particular quarter. The form of this report shall include a narrative summary of activities. At a minimum, **ARTS COUNCIL** shall include in its report a summary of expenditures to date. Also, **ARTS COUNCIL** shall provide quarterly reporting on approved service levels and performance indicators at the same time that it provides the required financial reporting to **CITY**.

It is understood and agreed by and between the parties that hotel/motel occupancy funds may be spent by the **ARTS COUNCIL** for day-to-day operations, including supplies, salaries, office rental, travel expenses, and other administrative costs, if directly related to the purposes of this agreement.

V.

This agreement is effective for the 2003-2004 budget year and shall continue in force and effect for as long as the parties deem it necessary. The College Station City Council shall review this Agreement annually prior to the budget adoption. However, the **ARTS COUNCIL** is an independent contractor and shall be responsible for the final product contemplated under this agreement. The **ARTS COUNCIL** shall have ultimate control over the execution of this Agreement. **ARTS COUNCIL** shall give personal attention to the faithful performance of this

Agreement. Adequate supervision by competent and reasonable representatives of the ARTS COUNCIL is essential to the proper performance of the work, and lack of such supervision shall be grounds for suspending the operations of the ARTS COUNCIL and is in breach of this Agreement.

The ARTS COUNCIL may, upon thirty (30) days prior written notice, terminate this Agreement. Upon receipt of said notice all unencumbered funds shall be remitted to CITY.

VI.

ARTS COUNCIL agrees to and shall indemnify and hold harmless CITY, its officers, agents and employees, from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees, for injury to or death of any person, or for damage to any property, arising out of or in connection with the work done by ARTS COUNCIL under this Agreement, regardless of whether such injuries, death or damages are caused in whole or in part by the negligence of CITY.

VII.

ARTS COUNCIL assumes full responsibility for the work to be performed hereunder, and hereby releases, relinquishes and discharges CITY, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character including the cost of defense thereof, for any injury to, including death of, person (whether they be third persons, agents, or employees of either of the parties hereto) and any loss of or damage to property (whether the same be that either of the parties hereto or of third parties) caused by or alleged to be caused, arising out of, or in connection with ARTS COUNCIL's work to be performed hereunder whether or not said claims, demands and causes of action in whole or in part are covered by insurance.

All notices shall be deemed received when sent certified mail, return receipt requested, to the parties at the addresses designated below or the addresses which they may from time to time designate in the same manner.

CITY OF COLLEGE STATION
P.O. Box 9960
College Station, Texas 77842

ARTS COUNCIL OF BRAZOS VALLEY
Park Place Plaza
2501 Texas Avenue South Suite 105-C
College Station, Texas 77840

VIII.

No part of this Agreement may be assigned without the prior written approval of CITY. This Agreement is subject to the laws and statutes of the State of Texas. No verbal Agreement or conversation with any officer, agent or employee of CITY, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

Executed this 6th day of October, 2003.

ARTS COUNCIL OF BRAZOS VALLEY

By: [Signature]
Printed Name: P. DAVID Romei
Title: Executive Director
Date: Oct 6, 2003

CITY OF COLLEGE STATION

By: _____
Ron Silvia, Mayor

ATTEST: _____

Connie Hooks, City Secretary

APPROVED:

[Signature]
for Thomas E. Brymer, City Manager

10/9/03
Date

[Signature]
Carla A. Robinson
City Attorney

10/9/03
Date

[Signature]
Charles Cryan, Director of Fiscal Services

10/7/03
Date